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A LEAGUE OF NATIONS.

We are interested in the proposal for a League of Nations mainly from the standpoint of the judicial settlement of justiciable controversies arising between nations. For that reason also we are interested in the propaganda of the League to Enforce Peace, of which former President Taft is the head.

Since the armistice was signed the League has been booming and its program seems to have caught the popular imagination. Into every legislature as it convenes resolutions favorable to the idea of a League of Nations are being introduced. Sixteen state legislatures have already indorsed the idea, the most recent being the state of Florida, where the following resolution, practically identical with the others, has just been adopted:

"Be it resolved, By the House and Representatives, the Senate concurring, that we favor the establishment of a League of Nations of which the United States shall be a member. We believe that such a league should aim at promoting the liberty, progress and orderly development of the world; that it should clinch the victory won at such terrible sacrifice by having the united potential force of all its members as a standing menace against any nation that seeks to upset the peace of the world."

In a number of recent addresses in the east, Mr. Taft has been driving home the idea of the League that "if there is not a League of Nations created in Paris the whole thing is a failure." Mr. Taft's present text is that a League of Nations is not only desirable but necessary. "We cannot escape it," he says, "if we wish to make the Peace Treaty worth anything more than the paper it is written on." The President of the League states the proposition along the lines similar to those which Premier Lloyd George is following in his campaign speeches. "If we set up a dozen or more new republics in Europe," he says, "then leave them alone without a League of Nations to guide and protect them, have we made for war or have he made for peace?"

"The war," Mr. Taft declares, "has delivered the opponents of the League into our hands. The war is a failure if we don't have it. These countries that we propose to set up have got to be held in leading strings. You can't do that except by a League of Nations that notifies them—every one of them—'Here! This war was fought for your liberty, that democracy might be safe, and we don't propose to have you set a fire here and set up a conflagration and bring about a war that we have sacrificed millions and billions and created all sorts of suffering to avoid.'"

The Four-Minute Men are also spreading the gospel of universal arbitration of national controversies by a League of Nations. William H. Ingersol, director of the Four-Minute Men Division, in his latest instructions refers to this matter as follows:

"American statesmanship formulated the statement of war aims which clarified the thought of the world; then it was accepted and adopted by the Allies as expressing their purposes; finally it became the basis upon which the enemy countries sought the armistice now prevailing. It is the contract between nations. It prophesies some form of a League of Nations to enforce international law which broke down when Germany invaded Belgium, instituted her submarine warfare on passenger ships, resorted to the use of poisonous gases and her whole long list of atrocities. This must not happen again. A new international order of some sort must be established."

It is interesting to note also that many neutral nations have come into line. Committees of the three Scandinavian govern-

ments have already prepared material on the common interests of the neutral states at the Peace Conference. As a result of joint meetings held in Copenhagen, a detailed proposal concerning a League of Nations has been agreed upon. A special committee has also been appointed to study the question of the position of the northern states to suggest international restriction of armaments. Although nothing can yet be done officially by these nations, the outgoing Spanish Cabinet Ministers at their last meeting expressed their unanimous approval of President Wilson's idea of a League of Nations. A committee of distinguished men has been formed to study the question of Spain's entry into such a League.

Another interesting development of the idea is that a symbol of a world organized in a League of Nations has appeared in Paris. A proposed League of Nations flag has been raised over the office of the Liberal newspaper *L'Oeuvre*. It is described as "a plain clear blue, the color of peaceful skies and calm, free seas."

All of this is specially interesting to lawyers, since it proves the truth which underlies the institution of courts and court procedure which is that all controversies of whatever nature can be settled by reason, and settled more economically and more justly in that way than by resort to force. Those who still cling to the idea of feudal times, that each man must defend his rights with his own right arm, and who still exalt the duel method of settling personal differences, will insist that the nations shall continue the duel method of deciding international disputes. But the world is growing wiser as well as smaller and its good sense is not going to permit such another terrible catastrophe as the present war to overwhelm civilization if it can be avoided by the simple expediency of a Court of Nations, supported by international police and public opinion.

Objections to a League of Nations made by Senator Reed and others fail to take into consideration that the world has already advanced some distance along the line of the judicial arbitrament of international questions. Our own country as well as Canada, in two separate controversies, one of which was lost and the other won, has submitted to the loss of important commercial and proprietary interests as the result of the verdict of an international tribunal. To make the submission of international disputes compulsory instead of voluntary under proper conditions is all there is in the idea of a League of Nations. Until the proposition has taken definite shape there can be no basis for criticism. Surely a League of Nations to enforce the peace of the world is one of the most beautiful ideals toward the attainment of which the entire world is justified in giving its best thought and energy.

NOTES OF IMPORTANT DECISIONS.

VALIDITY OF ACTS OF ONE ASSUMING WITHOUT AUTHORITY TO ACT IN AN OFFICIAL CAPACITY.—The general rule is that the authority of a public officer ceases with the expiration of his term of office. But if a public officer continues to exercise the duties of his office without molestation, he becomes a de facto officer for the purpose of protecting third persons who innocently deal with him as an officer. This rule, while not a logical corollary of the general rule first announced, is founded on a sound public policy. Quite frequently, however, some legal literalist defies the rule and seeks to take a collateral advantage of some unauthorized act by one assuming to act as a public official. That the courts, however, are inclined to adhere firmly to the rule of the validity of acts of de facto officers is made clear by the recent case of Holland v. Stubblefield, 206 S. W. Rep. 459. In this case a subsequent grantee of land sought to avoid the effect of a prior grant by setting up the fact that the first deed was acknowledged before a deputy clerk after said clerk's term of

office had expired; that, therefore, the acknowledgment was void and the deed improperly recorded. The logic was good, but unfortunately for defendant the law is not logic, nor pure reason, Mr. Coke to the contrary notwithstanding. Rules of law are made to fit the actual experience of men and to meet the limitations of our human nature. This fact is illustrated by the court's opinion:

"In the case under consideration the county clerk had power to appoint a deputy with power to take acknowledgments. The appointment was made during the first term of the clerk. No new appointment was made by the clerk after his election for the second term, but the deputy continued to act as such with the approval of his principal and with the acquiescence of the public. There can be no doubt, then, that the deputy clerk was a de facto officer.

"With that question decided we are then confronted by the well established rule that there is no distinction in law between the official acts of an officer de jure and those of an officer de facto. So far as the public and third parties are concerned, the acts of the one have precisely the same force and effect as the acts of the other (1 R. C. L., sec. 40, p. 268). Indeed, the doctrine has been carried to the extent of holding that the acts of a circuit judge, holding office under an unconstitutional act, were valid as to the public and third parties until the act was declared unconstitutional (Nagel v. Bosworth, Auditor et al., 148 Ky., 807, 147 S. W., 940). The same rule was applied to the acts of municipal officers holding office under a void statute (Wendt v. Berry, 154 Ky., 589, 157 S. W., 1115). There is every reason why the same rule should apply to acknowledgments upon which depend the validity of titles and the security of property rights. Following this rule, we held in Sousley v. Citizens' Bank of Nepton (168 Ky., 150, 181 S. W., 960) that a notary who held himself out as such, and in good faith continued to execute the duties of his office after his commission had expired, was a de facto officer, and an acknowledgment taken before him was valid. Indeed, any other view of the law would place upon the public the burden in every instance of ascertaining the authority of those persons empowered to take acknowledgments, and would probably invalidate thousands of titles which the parties had every reason to believe were valid in every respect.

CAN AN ACCOMPLICE WHO MAKES A "BAD" WITNESS BE CORROBORATED?—Under statutes in many states the rule is that the testimony of an accomplice must be corroborated. In other states where the common law rule is unchanged, conviction is allowable on the uncorroborated testimony of accomplices, although even in such jurisdiction the jury is usually cautioned against accepting the evidence of an accomplice without corroboration. State v. Williamson, 42 Conn. 261; Richardson v. U. S., 181 Fed. 9; State v. Concannon, 25 Wash. 327; Holingren v. U. S., 217 U. S. 509.

But the rule of corroborating an accomplice, according to a recent federal decision, applies only when the accomplice has proven a "good" witness. If his testimony is "torn to pieces" on cross examination it is useless to corroborate him. United States v. Murphy, 253 Fed. 404. In this case the testimony of an accomplice, Brice, was necessary to connect the defendant with the crime and while his testimony was corroborated by other witnesses in many particulars this other testimony was not sufficient alone to convict. In directing a verdict of acquittal, the court said:

"The serious question here under consideration is whether, if Brice, an accomplice, leaves the stand a thoroughly discredited witness upon many material points, it can be claimed that in spite of that fact there is any testimony here, aside from Brice, which connects defendants with the crimes charged, sufficient to submit the case to the jury. Where the government's case hinges largely upon the testimony of a confessed thief, who concededly might be an honest witness, but who has here time and time again evaded, whose testimony was at times absurd, inconsistent and full of falsehoods, and who, when confronted with the facts which pinned him upon either horn of a particular dilemma then confronting him failed to answer, and who on his own statement was torn apart, and of whom it is charitable to say falsified, can it be that such evidence is sufficient legal evidence to go to a jury? It is not, as counsel contend, a question of corroboration of what we might call a good accomplice—good in the sense that he made what is commonly called a good witness—frank, open, truthful, such as would impress a trier of a question of fact by his answers and his demeanor that he spoke the truth. But the case here is where we have a bad accomplice, who by his answers not only evaded and equivocated, who was utterly devoid of the sanctity of his oath, but who over and over again falsified upon material matters seeking to connect the defendants, and without whose testimony there is nothing."

Whether an accomplice is a "good" or a "bad" witness does not hitherto seem to have been set up as a ground of distinction with respect to the possibility of corroboration. Mr. Jones, in his works on Evidence (§769), states that the credibility or lack of it of the accomplice is not sufficient to "withdraw the case from the jury." He cites a great number of cases, among which is State v. Woolard, 111 Mo. 248, where, although the court declared "that the impeachment of the accomplice as a

witness was overwhelming," yet the case was permitted to go to the jury under a cautionary instruction.

It seems to us that it would have been better if the court in the principal case had directed a verdict of acquittal on the entire evidence, taking into consideration the corroborating testimony, than to base its decision on any such illogical distinction between accomplices as witnesses, which attempts arbitrarily to classify some as "good" witnesses and others as "bad" witnesses. The credibility of a witness is for the jury and not for the court to determine.

DOES A TITLE POLICY INSURE ONE'S TITLE AGAINST KNOWN EXISTING DEFECTS?—The idea is generally prevalent that all insurance contracts are contracts of indemnity, that is, they are intended to repay the amount of any loss suffered by the happening of some contingent event set out in the policy. That this is the general rule is true and it is true because the law seeks to avert the enforcement of wagering contracts. But there are exceptions to this rule and a title insurance contract is one of them.

A very interesting and important discussion of the protection offered by a title insurance policy is to be found in the opinion of the New York Court of Appeals in the recent case of Empire Development Company v. Title Guarantee and Trust Co. (decided Dec. 10, 1918), 60 N. Y. L. J. 1089. In this case plaintiff made a contract for the purchase of property dated February 13, 1907, agreeing to take the property "subject to assessments that might become due after December 14th, 1906." At the time of the contract (Feb. 13, 1907), plaintiff knew of certain assessments, but nevertheless secured from the defendant a policy of title insurance securing them from loss or damage by reason of any defect of title or incumbrances thereon. The lower court held that plaintiff could not recover, on the theory that plaintiff had agreed in his contract to take the property subject to any assessments which became a lien after December 6, 1906, and that at the time the insurance policy was taken out and the contract of sale executed, plaintiff knew of the assessments for which it now seeks to recover. The lower court argued that the plaintiff in its contract had agreed to pay these assessments; that, therefore, they had suffered no damage under their contract of sale, and that since the title insurance policy was a contract of indemnity against loss or damage, and since no loss or damage resulted, plaintiff could not recover. In reversing the lower court's judgment, the Court of Appeals makes clear some interesting distinctions to be observed in this form of insurance policy. The court said:

"It has been said often that every policy of insurance is a contract of indemnity. The accuracy of this statement is a question of definition. If it means that wagers are prohibited, that the insured must possess an insurable interest, it is true today. But if the word 'indemnity' is given a broader sense; if it means that whatever the language of the contract the insured may recover only the precise amount of the pecuniary damage caused to him by the contingency against which he seeks protection, then it is not now and never has been the inflexible rule. An ordinary fire or marine policy is a contract of indemnity, for it is so written (Ferguson v. Mass. M. L. Ins. Co., 32 Hun, 306, aff'd 102 N. Y., 647). But valued policies of this character may also be written and then, in the absence of fraud, the amount of the loss is immaterial (Sturm v. Atlantic Mutual Ins. Co., 63 N. Y., 77). All life policies are substantially valued policies (Olmsted v. Keyes, 85 N. Y., 593; Rawls v. Am. Mutual Life Ins. Co., 27 N. Y. 282)."

In considering the facts in the principal case the court calls attention to the fact that the loss insured against need not be contingent or unknown to the parties. The court said:

"As the statute permitted, the owners are insured against loss by reason of defective title to or an incumbrance upon their property. The policy itself defines what shall constitute a loss. It arises where the insured has been evicted under a judgment of a competent court; where in such a court the existence of a lien or incumbrance has been declared; where, on a sale, the property proves to be unmarketable, or where, because of some defect, a mortgage loan has failed. The plaintiffs come precisely within one of these provisions. In a competent court the existence and lien of these assessments have been declared. Because under their contract the plaintiffs are compelled to pay them, their loss is no less. As is said in Foehrenbach v. German-American Title & Trust Company (217 Penn. St. 331) the word "loss" is a relative term. Failure to keep what a man has or thinks he has is a loss. What the word means is to be measured by the standard accepted between the parties. As a help to our decision we must examine the purpose and object of the contract. To a layman a search is a mystery and the various pitfalls that may beset his title are dreaded but unknown. To avoid a possible claim against him; to obviate the need and expense of professional advice and the uncertainty that sometimes results even after it has been obtained is the very purpose for which the owner seeks insurance. To say that whan a defect subsequently develops he has lost nothing and therefore can recover nothing is to interpret the intention both of the insured and the insurer. In no sense is the contract a mere wager."

FOREIGN CAPITAL IN BRITISH COMPANIES.

The German doctrine of "peaceful penetration" had or at least was alleged to have had an easy means of effecting its object in the policy of the British companies Acts, which followed the traditional British principle of admitting and welcoming all who seek our shores and submit themselves loyally to our laws. Mainly in deference to the popular challenge which in consequence of the circumstances disclosed by the war was given to this practice, the Board of Trade in the beginning of this year appointed a committee "to inquire what amendments are expedient in the Companies Acts particularly having regard to the circumstances arising out of the war or the developments likely to arise on its conclusion." This committee has now reported. They have rightly interpreted the spirit of their remit by giving primary and chief place to this question of foreign capital. The discussion of the various aspects of it occupies eight pages of the report, the remaining three pages being taken up with proposed amendments, on company law and practice in the proper and narrower sense of these terms.

The committee note the existence of a strong desire "to ascertain and record the extent to which aliens are active in commerce here." A previous committee appointed by the Board of Trade in 1916 to investigate the general question of trade relations after the war reported against imposing restrictions on aliens becoming shareholders in British Corporations, though in favor of "definite information as to the nationality of the shareholders in every British company." But a subsequent committee similarly appointed in 1917 discouraged any attempt to secure this information. And the committee whose report we are considering were met with two sharply divergent views in the evidence submitted to them. On the one hand witnesses expressed opinions in favor of disclosure of the nationality of all shareholders and in some cases of limitation of the proportion which aliens may hold of the share capital of a company. Others on the contrary pointed out and uttered warnings as to the mischief which might result from restrictions tending to deter the influx of foreign capital.

In dealing with the question of policy involved the committee divide companies into three classes:

Class A.—Companies generally—not being companies within Classes B and C.

Class B.—Companies owning British shipping and,

Class C.—Companies engaged in "key" industries.

In the case of companies generally (Class A) it is recommended that no restrictions at all be imposed. "We think that, bearing in mind the sources from which an inflow of capital is to be anticipated and encouraged, the balance is largely in favor of the absence of restrictions, even although it involves non-disclosure of alien ownership. If there are restrictions, there must be disclosure of alienage, and the requirement of such disclosure might be thought to imply a stigma which in the case of our friends would be injurious. Simplicity and the absence of possible legal pitfalls are essential to free commercial development. We think the true policy is complete freedom so far as the law of joint stock companies is concerned. Our recommendations go to the length of allowing complete freedom as to the nationality both of the corporators and of the Board. They would allow, for instance, American capitalists to come here and establish themselves as a British corporation in which all the corporators and all the directors were American, and so of every other nationality.

"We would make no discrimination, so far as the law of Joint Stock Companies is concerned, between aliens of different nationality."

In regard to Class B, companies owning British shipping, the committee had before them the precedent of the old navigation laws, the policy of which as now, to a certain extent, embodied in the Merchant Shipping Acts was that British ships should be owned by British subjects. This, however, only applied to individuals, whereas now, as the report states ninety or even ninety-five per cent of British shipping is owned by corporations, in which, of course, the shares in part or even in whole might belong to aliens. The question for the committee therefore in effect was whether they should carry the principle of the merchant shipping act to its logical conclusion and recommend that all companies holding shipping interests should consist of British shareholders. Their conclusion is this: "We are satisfied, upon evidence, that the total exclusion of aliens from ownership of British ships is not essential for national safety and as a commercial matter is not expedient." Admittedly this is a departure from the policy of the merchant shipping act. However, the committee though so finding, are not prepared to say that in this Class B, there should be the same freedom as in Class A and recommend that not more than twenty per cent of the share capital of shipping companies should be held by aliens, and that those shares should carry no more than twenty per cent of the voting power.

Coming now to Class C, "Key industries" (that is industries essential to individual existence and stability), there is no attempt made to define what is a "key" industry, and as is rightly pointed out it cannot be ascertained at the registration of a company whether it is to carry on a key industry or not for "the modern memorandum of association includes such a multitude of objects that a key industry might be *intra vires* of almost any company." The committee propose that the Board of Trade should be empowered to make at any time an inquiry whether a company in Class A is carrying on a key industry or not, and if the Board finds that it is, the company should fall out of Class A into Class C; and for all companies thus placed in Class C, the key industry category, the committee recommend that the limit of twenty per cent recommended in the case of merchant shipping should be made applicable and if the 20 per cent limit has in fact been exceeded the Board of Trade should be empowered to apply to the High Court for an order for sale of so much of the share capital as will reduce the alien holding within the limit with a direction that the Court shall so far as reasonably possible take the shares for sale rateably from the alien holders.

The Committee recognize that notwithstanding their conclusion as to the advisability of not imposing restrictions on foreign capital in the general case, yet Parliament may decide otherwise; for instance that as regards aliens who are now our enemies a special stigma ought to be attached forbidding them entering our commercial fellowship. Accordingly to provide machinery for effecting such a policy there is outlined in the report a detailed scheme of disclosure of nationality of shareholders and directors. This scheme will only apply to Class A if Parliament so decide; the committee disapprove of applying it to the companies in this class; but as regards Class B and Class C (when a company is placed in it), the scheme of disclosure will necessarily apply in order that conformity to the limit of twenty per cent may be ascertainable.

The report seems to us a wise solution of a vital question. It may be said to have a strong bias in favor of freedom, but there was before the committee the traditional policy of this country, and clearly the evidence before them which supported a reversal of that policy was too slender to justify altering the *status quo*. The committee in a word have pronounced in favor of liberty, only taking care that where

vital national interests are concerned a safe limit shall not be exceeded. The method of practically accomplishing this is ingenious and seems likely to be effective. We respectfully recommend a perusal of this interesting report to our readers, for not only will they find the general political and economic questions to which we have referred capably discussed, but other points are dealt with which will be of practical interest to all concerned in any way with companies or their management.

DONALD MACKAY.

Glasgow, Scotland.

THE STRANGE CASE OF MR. BALDWIN.

Idealists—men consumed by an idea, usually an impractical one—are not rare, but no more strange instance has appeared in modern times than the case of Roger N. Baldwin of New York, brilliant young Harvard scholar and sociologist. On October 30, 1918, he was sentenced to eleven months' imprisonment in the penitentiary for refusing to submit to a physical examination for entrance into the army after being summoned for that purpose. United States v. Baldwin (not yet reported). The case was heard by Justice Julius M. Mayer, Judge of the United States District Court for the Southern District of New York. The case was conducted more as a "friendly proceeding" than as a criminal trial. The prosecuting attorney and the court did not seem to regard the prisoner as an ordinary criminal, and both, in public statements, recognized his sincerity, intelligence and likable qualities.

The District Attorney, in his opening statement, said that upon being called upon to present himself for physical examination, the defendant went to his local draft board and told them that he would refuse to submit to a physical examination, and thereafter directed a letter to the District Attorney giving his reasons for failing to comply with the law. These reasons as stated by Mr. Baldwin, are as follows:

"First: I am opposed to the principle of conscription for any purpose whatever, in time of war or peace. I would therefore decline to perform any service under compulsion regardless of its character.

"Second: I am opposed to the use of force to accomplish any end, however good. I am therefore opposed to participation in this or any other war. My opposition is not only to direct military service, but to any service whatever designed to help prosecute the war."

The District Attorney offered the defendant himself in evidence, who had agreed to make a frank statement of the facts of the case and the reasons for his conduct. Before concluding his unusual presentation of a criminal case the District Attorney testified himself to the defendant's good character by saying: "He is a man of unusual intelligence; his general bearing and demeanor indicate his sincerity of purpose."

Mr. Baldwin, on invitation of the court, stated the facts exactly as the District Attorney had related them, and in explaining the intent and motive of his actions, said:

"The compelling motive for refusing to comply with the draft act is my uncompromising opposition to the principle of conscription of life by the state for any purpose whatever in time of war or peace. I not only refuse to obey the present conscription law, but I would in future refuse to obey any similar statute which attempts to direct my choice of service and ideals. I regard the principle of conscription of life as a flat contradiction of all our cherished ideals of individual freedom, democratic liberty and Christian teaching. I realize that to some this refusal may seem a piece of sheer willful defiance. It might well be argued that any man holding my views might have avoided the issue by obeying the law, either on the chance of being rejected on physical grounds, or on the chance of the war stopping before a call to service. I answer that I am not seeking to evade the draft; that I scorn evasion, compromise and gambling with moral issues."

Those are the words of an impartial idealist, who is convinced of the truth of a proposition and has no concern with the insuperable obstacles in the way of its realization.

Speaking of his antecedents, Mr. Baldwin said:

"I have had an essentially American upbringing and background. Born in a suburban town of Boston, Massachusetts, of the stock of the first settlers, I was reared in the public schools and at Harvard College. Early my mind was caught by the age-old struggle for freedom; America meant to me a vital new experiment in free political institutions; personal freedom to choose one's way of life and service seemed the essence of the liberties brought by those who fled the mdiæval and modern tyrannies of the Old World. But I rebelled at our whole autocratic industrial system, with its wreckage of poverty, and misery and crime, and childhood robbed of its right to free growth. So I took up social work upon leaving college, going to St. Louis as director of a settlement and instructor in sociology at Washington University. For ten years I have been professionally engaged in social work and political reform, local and national."

Only a few years ago the writer of this note found himself in very pleasant association with Mr. Baldwin, who was then the popular secretary of the Civic League of St. Louis and a gentleman of most attractive manners and personality. Kind, considerate and retiring, Mr. Baldwin was absorbed in the desire not only to help the unfortunate but to change his condition, his environment and even his views of life. He was a dreamer, an idealist who would wake up periodically and put his dreams into execution. By reason of this acquaintance with Mr. Baldwin's aspirations, we can appreciate the sadness that pierced his heart when the breaking out of the war compelled him to give up his work and his friends and going to New York, to undertake the Utopian task of stemming the patriotic war passion that had seized the American heart but which he could never understand. On this point Mr. Baldwin said:

"I would justify the work I have done on the ground of American ideals and traditions alone, as do many of those who have been associated with me. They have stood for those enduring principles which the revolutionary demands of war have temporarily set aside. We have stood against hysteria, mob violence, unwarranted prosecution, the sinister use of patriotism to cover attacks on radical and labor movements, and for the unabridged right of a fair trial under war statutes. We have tried to keep open those channels of expression which stand for the kind of world order for which the President is battling to-day against the tories and militarists.

"Now comes the government to take me from that service and to demand of me a service I cannot in conscience undertake. I refuse it simply for my own peace of mind and spirit, for the satisfaction of that inner demand more compelling than any consideration of punishment or the sacrifice of friendships and reputation."

Another very strange and unusual characteristic of this defendant is his freedom from egotism. "I seek" said he, "no martyrdom and do not now seek any publicity. I merely meet as squarely as I can the moral issue before me, regardless of consequences."

Only once did the defendant lose the quiet thread of his narrative, and that was when the vision of a world free from rule and authority flashed across his mind. It is the same apparition that has disturbed the logical processes of many men in the world and is interesting as a study in psychology. With real eloquence, defendant painted the picture as it quickly crossed his mind. He said:

"At this moment I am of a tiny minority and I feel myself just one protest in a great revolt surging up from among the people—the struggle of the masses against the rule of the world by the few—profoundly intensified by the war. It is a struggle against the political state itself, against exploitation, militarism, imperial-

ism, authority in all forms. It is a struggle to break in full force only after the war. Russia already stands in the vanguard, beset by her enemies in the camps of both belligerents—the Central Empire is breaking asunder from within—the labor movement gathers revolutionary force in Britain, and in our own country the Nonpartisan League, radical labor and the Socialist party hold the germs of a new social order. Their protest is my protest. Mine is a personal protest at a particular law, but it is backed by all the aspirations and ideals of the struggle for a world freed of our manifold slaveries and tyrannies."

The court, in sentencing the defendant, was willing to give the offender recognition of his unusual qualities. "While your views," said the court, "are exactly opposite to those I entertain, I cannot help but admire your self-respecting and manly position in stating views which to my mind are intolerable."

The court, with simple but effective argument, touches the weak place of defendant's position, saying:

"In all that you have said I think that you have lost sight of one very fundamental and essential thing. A republic can last only as long as the laws are obeyed. The freest discussion is permitted in the processes that lead up to the enactment of a statute. There should be the freest opportunity of discussion as to the method of administration of a statute, but the republic must cease to exist if disobedience to any law enacted by the orderly processes laid down by the constitution is in the slightest degree to be tolerated."

In passing sentence the court said:

"You ask for no compromise; you shall have none. The sentence of the court is that you will be confined in the penitentiary for eleven months and ten days."

We have quoted so much of this case, not because of the defendant's importance as an individual, but the importance of certain incidents in the case as indicating the nature of a type of political philosophy that is growing and must be counteracted. The dream of turning the world upside down so that the weak and unfortunate will be at the top and the strong and the successful shall be at the bottom is as old as the world. But it is only a dream. By an inexorable law of life such a revolution of society, whenever attempted, soon results in the same readjustment of the elements of human society.

The calm, dignified and thoroughly logical opinion of Justice Mayer in this case, sympathizing as it does with all that is best in the aspirations of our weak humanity, but showing how those aspirations are forever lost, together with everything else which is counted worth while, by a disregard of the majesty of the law, will do much to counteract the influence of these disturbing elements of modern society.

St. Louis, Mo.

ALEXANDER H. ROBBINS.

JOINT TORT-FEASORS—CONTRIBUTION

HOBBS v. HURLEY.

(Supreme Judicial Court of Maine. Nov. 15, 1918.)

104 Atl. 815.

Rule denying contribution as between joint tort-feasors has no application to torts which are result of mere negligence in carrying on lawful transaction, as transportation of passengers in automobile; parties being tort-feasors not willfully but by inference of law.

CORNISH, C. J. This is an action on the case to recover from the defendant the sum of $274.05 as contribution towards the payment of a joint judgment rendered against both the plaintiff and defendant, the entire sum having been paid by the plaintiff.

The material facts leading up to this action are, briefly, as follows: On September 7, 1912, one Jethro D. Pease was thrown from his wagon and injured by reason of an automobile, driven by one Herrick as chauffeur, suddenly backing against and frightening the horse of Pease and causing him to cramp the wheels. The automobile was owned by Mr. Montgomery, and an action of negligence was first brought against him by Pease; but it was held that the suit could not be maintained, because, while Mr. Montgomery was the owner of the machine,

he was not in the possession, control, and management of it, nor was the chauffeur acting as his servant at the time of the injury. Pease v. Montgomery, 111 Me. 582, 88 Atl. 973.

Then suit was brought by Pease against Messrs. Gardner, Hobbs, Hurley, and Herrick, and judgment was rendered in favor of the then plaintiff against Messrs. Hobbs and Hurley, the parties in the case at bar, in the sum of $500, and judgment in favor of Gardner and Herrick. Pease v. Gardner, 113 Me. 264, 93 Atl. 550. The liability of Messrs. Hobbs and Hurley was placed upon the ground that they had secured this automobile from its owner, Mr. Montgomery, to take Mr. Gardner, and perhaps others, who were on a political speaking campaign, from Rockland to other towns in Knox county; that for that trip they had the legal possession, control, and management of the car and were responsible therefor; that the engagement and operation of the car was a joint enterprise on their part as chairmen of certain political committees, and Herrick, the chauffeur, was for the time being their servant.

The defendant raises two contentions: First, that the parties to this action against whom the judgment was rendered were joint tort-feasors, and that one joint tort-feasor cannot enforce contribution from another; second, if the plaintiff is legally entitled to recover, it is only for one-fourth of the amount of the joint judgment, as four persons were involved in the original transaction which was the basis of the judgment.

1. Right of Contribution.

(1) It is undoubtedly a general rule of law that as between joint tort-feasors, in pari delicto as to each other, there is no right of contribution.

The reason of the rule is that the law will not lend its aid to him who founds his cause of action upon an immoral or illegal act. It leaves him where it finds him. The leading case is Merryweather v. Nixan, 8 T. R. 186, and this has been uniformly and consistently followed. The term "tort-feasor," as used here, applies to persons who by concert of action intentionally commit the wrong complained of.

(2) But an exception to this rule is equally well settled, and that is that when the parties are not intentional and willful wrongdoers, but are made wrongdoers by legal inference or intendment, are involuntary and unintentional tort-feasors, so to speak, then the preceding rule does not apply, and contribution may be enforced. The rule ceases because the reason for it has ceased. Contribution is not contractual. It is an equitable right founded on acknowledged principles of natural justice and enforceable in a court of law.

The exception was suggested by Lord Kenyon in Merryweather v. Nixan, supra, which announced the rule, and has been fully developed and recognized by later decisions, both in England and this country. Betts v. Gibbons, 2 Ad. & Ell. 57; Pearson v. Skelton, 1 Mees. & Wels. 504; Wooley v. Batte, 2 Car. & P. 417; Bailey v. Bussing, 28 Conn. 455; Id., 37 Conn. 349; Acheson v. Miller, 2 Ohio St. 203, 59 Am. Dec. 663; Jacobs v. Pollard, 10 Cush. (Mass.) 287, 57 Am. Dec. 105; Nickerson v. Wheeler, 118 Mass. 295; 6 R. C. L. 1055, and cases cited.

The distinction between the two classes of cases, and therefore between the rule and the exception, was clearly set forth by the Massachusetts court in these words:

"It is undoubtedly the policy of the law to discountenance all actions in which a party seeks to enforce a demand originating in a willful breach or violation, on his part, of the legal rights of others. Courts of law will not lend their aid to those who found their claims upon an illegal transaction. No one can be permitted to relieve himself from the consequences of having intentionally committed an unlawful act, by seeking an indemnity or contribution from those with whom or by whose authority such unlawful act was committed. But justice and sound policy, upon which this salutary rule is founded, alike require that it should not be extended to cases where parties have acted in good faith, without any unlawful design, or for the purpose of asserting a right in themselves, or others, although they have thereby infringed upon the legal rights of third persons. It is only when a person knows, or must be presumed to know, that his act was unlawful, that the law will refuse to aid him in seeking an indemnity or contribution. It is the unlawful intention to violate another's rights, or a willful ignorance and disregard of those rights, which deprives a party of his legal remedy in such cases. It has therefore been held that the rule of law, that wrongdoers cannot have redress or contribution against each other, is confined to those cases where the person claiming redress or contribution knew, or must be presumed to have known, that the act, for which he has been mulcted in damages, was unlawful." Jacobs v. Pollard, 10 Cush. (Mass.) 287, supra.

(3) It may be safely asserted that the rule denying the right of contribution as between joint tort-feasors has no application to torts which are the result of mere negligence in carrying on some lawful transaction. In such cases the parties are tort-feasors, not willfully, but by inference of law, and the term itself

seems disproportionately harsh under such circumstances.

(4, 5) The application of this exception to the facts in the case at bar is obvious. As was said in the former case:

"The engagement and operation of the car on this special trip seem to have been a joint enterprise on the part of Capt. Hurley and Mr. Hobbs, who were interested in a common undertaking." Peace v. Gardner, 113 Me. at 267, 93 Atl. 550.

That undertaking was entirely lawful, the transportation of certain parties from one place to another. No element of wrongdoing attached to it. In fact, so far as the evidence discloses, neither the plaintiff nor the defendant was present at the time of the accident. But as the car was legally under their possession and control, as they were the owners pro hac vice, as Herrick the chauffeur was their agent, his want of care toward third persons in the eye of the law was imputable to them under the doctrine of respondeat superior. However, there was no voluntary, willful, and intentional wrong-doing on their part. There was no community of wrong, and there could have been none. Therefore, the plaintiff having paid the entire sum for which he and his quondam partner were jointly liable, he can recover of the defendant his proportional part or one-half thereof. Any other result would be illogical and unjust.

2. Amount of Contribution.

(6, 7) As four persons seem to have been concerned with the transaction, Messrs. Gardner, Hobbs, Hurley, and Herrick, the defendant claims that, if forced to contribute at all, contribution on his part should be limited to one-fourth of the amount of the judgment.

The answer to this contention is twofold:

In the first place, all four of these persons were joined as defendants in the former suit, and their liability or nonliability was there determined. Judgment was rendered against Hobbs and Hurley, while it was held that the action should not be maintained against Gardner and Herrick. That judgment still stands unreversed and is not open to collateral attack unless it was obtained by fraud or unless want of jurisdiction appears on the face of the record. Toothaker v. Greer, 92 Me. 546, 43 Atl. 498; Winslow v. Troy, 97 Me. 130, 53 Atl. 1008. The rights of the parties were fixed by that judgment, and it constitutes the impregnable basis of this suit. Contribution must be of one-half the amount.

(8) In the second place, the result is as it should be under the law. Mr. Gardner was merely a passenger, and no liability attached to him.

(9) The chauffeur, Herrick, was the active party in the negligent act creating the liability; but, as he was at the time the servant of Hobbs and Hurley, judgment could not be rendered against him and also against Hobbs and Hurley in a joint suit, as both master and servant cannot be held jointly liable for a negligent act. The reason is that joint tort-feasorship in cases of negligence necessarily implies a community of interest in the object and purposes of the undertaking and an equal right to govern and direct the conduct of each other in respect thereto, and master and servant cannot be said to engage in a common enterprise because that relation is inconsistent with the relation of master and servant. Hence the rule. Parsons v. Winchell, 5 Cush. (Mass.) 592, 52 Am. Dec. 745; Mulchey v. Meth. Relig. Soc., 125 Mass. 487; Hill v. Murphy, 212 Mass. 1-4, 98 N. E. 781, 40 L. R. A. (N. S.) 1102, Ann. Cas. 1913C, 374; Bailey v. Bussing, 37 Conn. 349; Betcher v. McChesney, 255 Pa. 394, 100 Atl. 124. In this we are not speaking of actions of trespass where the wrong is inflicted at the command of the superior, but of ordinary actions of negligence.

We are aware that in some jurisdictions joint actions against master and servant have been allowed even in cases of negligence. Mayberry v. No. Pac. Ry. Co., 100 Minn. 79, 110 N. W. 356, 12 L. R. A. (N. S.) 675, 10 Ann. Cas. 754 and note. But our court has adopted with approval the doctrine and reasoning of the Massachusetts court. Campbell v. Portland Sugar Co., 62 Me. 552, 566, 16 Am. Rep. 503.

(10) The injured party, Pease, had the right to bring suit against either the servant or the masters, but could not recover a joint judgment against all. Duryee v. Hale, 31 Conn. 217; Bailey v. Bussing, 37 Conn. 352. If judgment were satisfied against the masters, they might perhaps sue and recover from the servant, but recovery would be not for contribution of a share, but for the entire amount.

Here judgment was obtained against the masters alone, and the servant was properly omitted.

Our conclusion therefore is that this action for contribution is maintainable, and the entry should be

Judgment for plaintiff for $274.05, with interest from date of the writ.

NOTE—*Contribution by Tortfeasor Proximately Liable.*—In Union Stockyards Co. v. Chicago, B. & Q. R. Co., 196 U. S. 217, 25 Sup. Ct. 226, 49 L. ed. 453, 2 A. & E. Ann. Cas. 525, it was said: "The general principle of law is well settled that one of several wrongdoers cannot recover against another wrongdoer, although he may have been compelled to pay all the damages for the wrong done. In many instances, however, cases have been taken out of this general rule, and it has been held inoperative in order that the ultimate loss may be visited upon the principal wrongdoer, who is made to respond for all the damages, where one less culpable, although legally liable to third persons, may escape the payment of damages assessed against him by putting the ultimate loss upon the one principally responsible for the injury done."

And it also has been held that where, of two parties, both are active participants in the commission of an injury, courts will not go into any inquiry to disentangle their respective faults, but the rule of no contribution by one to the other will be applied. Cincinnati R. Co. v. Louisville & N. R. Co., 97 Ky. 128, 30 S. W. 408.

And so where there is concurrence of negligence. Thus, in Central R. Co. v. Macon R. & L. Co., 9 Ga. App. 628, 71 S. E. 1076. Where injury arose from a grounded wire touching a cable it was said: "Under the theory of the fact here presented the light company's negligence in allowing the wire to become grounded elsewhere (than on the railroad's premises) would not have caused the homicide in this case, if the negligence for which the jury held the present plaintiff (railroad company) liable had not concurred with it, if the wire had not been allowed to sag and come in contact with the wire cable (on railroad's premises) or if the proper inspection had been made as to the portion of the wire located in the railway yards. Hence in this view of the case the negligence was truly concurring and there can be no action for contribution or indemnity."

But in Boston, W. H. & R. Co. v. Kendall, 178 Mass. 232, 59 N. E. 657, 51 L. R. A. 781, 86 Am. St. Rep. 478, it was held that where an employer was held liable to an employe for explosion of a boiler, the employer, though under duty to inspect the boiler, yet he could recover over against manufacturer on whose warranty he relied and this "whether the false warranty should be called a tort or breach of contract."

And in Nashua Iron & S. Co. v. Worcester & N. R. Co., 62 N. H. 159, it was said that when one whose horse ran away, because frightened by a train, could recover from another actively causing the horse to become frightened, where the latter could by proper care have prevented the horse becoming frightened.

In a later case in New Hampshire Court it was held that where a railroad company was held liable to one injured because of dangerous condition of its track. This condition was brought about by one whose premises adjoined the track. The court so ruled that the question before the jury was whether the negligence of the defendant sued for contribution was the sole cause of the injury, or whether the negligence of the plaintiff's fellow servants, in the suit for the injury, was such cause, the record in said cause leaving this question open. Boston & M. R. Co., 71 N. H. 494, 53 Atl. 304.

In Consol. K. C., S. & R. Co., 45 Tex. Civ. App. 100, 99 S. W. 181, a railroad failing to warn a brakeman of the existence of a pipe across the track, sued the company maintaining the pipe. The court declared that the railroad which omitted to take precautions to warn its employe and the company maintaining the pipe were actively negligent and the court would not inquire as to which company was the tort feasor directly or proximately liable. This seems in accord with the doctrine declared by Texas Supreme Court holding that the two were *in pari delicto* as to each other. Galveston, H. & S. A. R. Co. v. Nass, 94 Tex. 255.

In Scott v. Curtis, 195 N. Y. 424, 88 N. E. 794, 40 L. R. A. (N. S.) 1147, it was held that if a pedestrian was injured because of the unsafe manner in which a cover was placed upon a coal hole in the sidewalk, by a coal dealer, he can, if not actively negligent, recover from the coal dealer for the loss thus caused, but if the accident arose in no way from the latter's negligence, then that was not the proximate cause of the accident.

It has been held that a gas company against which there was recovery for leakage of gas from a defective pipe was entitled to recover from a street railway whose negligent excavation induced the breaking of the pipe. Philadelphia Co. v. Central Traction Co., 165 Pa. 456, 30 Atl. 934.

And an electric lighting company recovered from a telephone company, where the latter in stringing its wires failed to take precautions against sagging of wires and thus preventing contact with electric company's wires. Fulton County G. & E. Co. v. Hudson R. Teleph. Co., 114 N. Y. Supp. 642, 130 App. Div. 343.

These cases prove, that, if the proximate cause can be clearly traced, ultimate liability will fall on the tort feasor responsible therefor, but, if notwithstanding the existence of such cause, yet if subsequently there can be ascertained fault, that proves concurrent negligence, contribution will be denied to him held liable to him who sues for injury C.

ITEMS OF PROFESSIONAL INTEREST.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 162.

Judgment, Relation to Third Party, Relation to Client — Advice respecting sale of client's unpaid judgment to purchaser whose motive is to promote inequitable result through application of assumed rule of law.— Advice to sell not disapproved.

Our client has obtained a judgment against A and B for negligence. A is insured by a

Surety Company not a defendant. Both defendants are financially responsible. An offer has now been made for the purchase of the judgment. We have reason to believe that the motive inducing the offer of purchase is to enforce the judgment against B, and thus relieve the Surety Company on the theory that B, having paid the judgment, could not enforce contribution. We are informed that this practice is not unusual.

In the opinion of the committee should our belief respecting the motive which prompted the offer deter us from advising our client to accept it?

ANSWER No. 162.

The Committee expresses no opinion on the theory of law assumed in the question.

In the opinion of the Committee, the lawyer should put the facts before the client for the exercise of his own moral judgment. But the Committee is of opinion that the suspected motive of the purchaser is not sufficient reason to deter the lawyer from advising his client to accept the offer if he is so inclined under all the circumstances of the case, though he might resort to either or both of the judgment debtors.

QUESTION No. 163.

Relation of Lawyer to Court—Evidence—Divorce—Arrangement to procure evidence of past adultery by bargain with offender—Disapproved.

Is it proper for an attorney to bring an action for a divorce where the evidence of adultery is obtained as follows:

A, the wife, is living apart from B, her husband, for over a year. B, the husband, and his nephew have a cigar factory to which a woman comes after business hours, when the acts complained of are committed. A, the wife, endeavored to get evidence of the commission of such acts but was unable to obtain same with sufficient certainty to obtain a decree of divorce.

Thereafter B, the husband, left New York, and is now living in Florida. He is now willing to permit the nephew, who was present when the said acts were committed, to testify against him if the wife releases him from all claims for future support for herself and children. Unless the wife consents to this arrangement the nephew will not testify, as he is under the control of B, the husband, and will do as he is instructed by him. None of the acts complained of were committed with the consent, connivance, privity or procurement of the wife.

ANSWER No. 163.

In the opinion of the Committee the lawyer should not countenance the bargain suggested; such a bargain to obtain the testimony of the necessary witness is against public policy.

NEXT MEETING OF THE AMERICAN BAR ASSOCIATION.

The Executive Committee of the American Bar Association, which met in New York City January 4th, has voted to hold the next annual meeting of the Association at the Hotel Griswold, Eastern Point, New London, Conn., on September 3, 4 and 5, 1919. Other affiliated bodies will meet at the same place about the same time.

CORRESPONDENCE.

FREEDOM OF THE SEAS.

Editor Central Law Journal:

I am one of your subscribers for the last nine years. Always read your papers with great pleasure, deriving much benefit from some of the articles appearing therein. Up to date I have not commented on any of them to you. In your No. 24 of Vol. 87 appears an article with the caption "The League of Nations," by Viscount Grey. I suppose I would have paid no special attention to this article if I had not read lately several articles appearing in the daily papers which all point in the same direction, that is to "England's Supremacy on the Seas." If, as he truly states, militarism is an enemy of mankind and should be wiped out, does not the same rule apply to the Navalism practiced by England? In some of their late utterances English statesmen have publicly declared that England cannot and will not give up her naval program and must keep control of the seas, that England, being an island nation, cannot give that power out of her hands.

We have won this war. Shall we now be satisfied with a minor position on the waters? Does not most of our business depend on our

export facilities? We cannot use up, here in our own country, what we produce, but depend on the opening of new, foreign markets. Beyond Canada, which by the way is part of the English empire, is the ice; across the southern border is Mexico and then come some petty republics which, being in a tropical climate, have more than they need and therefore too, are export nations, if we may call them nations at all. The trade connections between North and South America are by water.

No. We do not have it necessary to depend on England's protection. Let us be frank as it behooves a great nation. We must have our share of the trade with the rest of the world which is "mainly by water for us, just as much as for England." We must be our own masters, securing this trade with our "own" ships and have the "Stars and Stripes" fly from "OUR" mastheads in all harbors. We want a navy second to none, both for trade and protection.

Respectfully
O. H. E. KRAMER.

Corpus Christi, Tex.

HUMOR OF THE LAW.

Young Lawyer—Now, tell me the truth: are you a confirmed criminal?

His Client—No more than you be, wot's only been practicin' law fer three weeks.

"You say she has engaged a dramatic instructor. Does she intend to go upon the stage?"

"Oh, no. She has sued her husband for divorce and is preparing for her appearance in court."

"What's the objection to my printing what I like in the Congressional Record" asked the new member of congress.

"You've got to suffer for the general good, son," replied Senator Sorghum, soothingly. "You're liable to slap something in that is so interesting there won't be white paper enough in the country to meet the demands for that particular issue."—Washington Star.

The exact status of a mother-in-law was brought into question recently by an Irishman. He was sending a money order to France. In conformity with a new regulation, the clerk asked him if the money was destined to aid the enemy in any manner.

The Irishman scratched his head.

"Is the addressee an alien enemy?" demanded the clerk.

"Be jabers, I don't know at all, at all," was the reply. "She's me mother-in-law."

"You don't seem to feel so enthusiastic as usual about speech-making."

"Well," answered Senator Sorghum, "times have changed and it isn't so easy for a man in a silk hat and a frock coat to stand out before a lot of men in khaki uniforms or overalls and assert that he is saving the country all by himself."—Washington Star.

Secretary Tumulty said recently:

"It's astonishing how many thousands of requests for army commissions come to the White House with every mail. A good many men seem to think that an army commission is a safe and highly paid sinecure.

"Yes, a good many men are like the chap who was after a consulship.

"'So you're after the consulship to Tobaga, eh?' a friend said to him.

"'Yep, with both feet,' the chap answered.

"'Is a consulship hard work?'

"'Not after you get it.'"—Washington Star.

Arthur Letts tells a good one at his own expense:

He was staying in a large provincial town when he heard that Mr. Smith, a friend of his, was at a neighboring hotel, so he rang up his hotel (as he thought).

"Is Mr. Smith there?" he inquired.

"No, he is not," came the response.

"Well, has he engaged rooms?"

"No; we don't reserve rooms here. First come, first served, is the rule," came the sharp and somewhat airy reply.

"Can you tell me if he will stay with you when he reaches the town?"

"It's possible he may, but we can't say."

"Look here," roared Letts, "you're the most impudent jack-in-office that ever spoilt his master's business. Go away and tell someone who knows more about the business of the hotel to come and speak to me."

There was a chuckle at the other end. "This isn't a hotel, it's the county jail," said the voice.—St. Louis Republic.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client**—Employment.—While an attorney is not ordinarily obliged to accept employment, and should not do so when press of other matters will prevent immediate action, his acceptance of employment under such conditions is not a ground for disbarment.—People v. Wing, Ill., 120 N. E. 451.

2. **Bankruptcy**—Act of.—A debtor's written admission of inability to pay his debts, and willingness on that ground to be adjudged a bankrupt, is sufficient to support an adjudication, without regard to his solvency or insolvency.—In re Wellesley, U. S. D. C., 252 Fed. 854.

3.——Conditional Sale Contract.—Appointment of receiver by bankruptcy court does not oust bankrupt's title to his property seized by receiver, and where property is sold under contract retaining title in vendor until payment of purchase money, his title is not lost by seizure of property by purchaser's receiver in bankruptcy.—Vaughn-Carlton Co. v. Studebaker Corporation of America, Ga., 97 S. E. 99.

4.——Partnership.—Where it did not appear that the bankrupt was insolvent when he bought out his copartner or that the firm was ever insolvent, a claim for loans to the bankrupt for that purpose cannot be rejected, on the ground that payments by the bankrupt to his copartner were preferential.—In re Keller, U. S. D. C., 252 Fed. 942.

5.——Summary Jurisdiction.—Where trustee in bankruptcy had possession of the leasehold formerly held by bankrupt, bankruptcy court had summary jurisdiction, on petition of trustee, to determine if title to lease was in bankrupt estate or in adverse claimants.—Lawhead v. Monroe Bldg. Co., U. S. C. C. A., 252 Fed. 758.

6.—**Banks and Banking**—Notice.—A bank is not charged with notice of facts known to its president, dealing in his private capacity with third persons.—Alsabrooks v. Bank of Sparta, Ga., 97 S. E. 111.

7. **Bills and Notes**—Acceleration of Maturity.—A note, containing an acceleration of maturity clause and secured by mortgage, is non-negotiable.—Mathews v. Wilson, Cal., 175 Pac. 647.

8.——Antecedent Signature.—An indorsement of a note is a warranty to every subsequent holder in good faith that the instrument and all antecedent signatures are genuine.—Odom Realty Co. v. Central Trust Co., Ga., 97 S. E. 116.

9.——Notice of Defect.—Holder takes note with notice of infirmity or defect in title only where he has actual notice, or knowledge of such facts that his action in taking instrument amounts to bad faith.—Lundean v. Hamilton, Iowa, 169 N. W. 208.

10. **Brokers**—Dual Agency.—That a broker, contracting to secure a loan and perform other services for an agreed commission, advanced money on the loan secured by a mortgage taken in the name of another as mortgagee, intending to sell the mortgage, did not constitute him a dual agent, so as to forfeit his commission.—In re Williams, U. S. D. C., 252 Fed. 924.

11. **Burglary**—Intent.—An indictment for burglary charging breaking and entry with intent to commit larceny must allege that the intent was to steal the property of some person.—People v. Picard, Ill., 120 N. E. 546.

12. **Carriers of Goods**—Bill of Lading.—Where bill of lading stipulated the measure of damages in case of loss or damage to goods, the amount of damages should be governed thereby, although, in the absence of such a provision, the measure of damages would have been otherwise.—Cudahy Packing Co. v. Bixby, Mo., 205 S. W. 865.

13.——Insurer.—The universal rule is that the carrier is an insurer of the safe transportation of freight, unless the damage was the proximate result of and solely produced by an act of God or a public enemy, or because of the inherent nature or quality of the thing transported, the fault of the shipper, etc.—Louisville & N. R. Co. v. Taylor, Ky., 205 S. W. 934.

14. **Carriers of Passengers**—Jerks and Jolts.—Since jerks and lurches of a train are unavoidable to some extent, for a carrier to be liable for injuries to a passenger caused thereby, they must be unusual, violent, and unnecessary.—Millers Creek R. Co. v. Blevins, Ky., 205 S. W. 911.

15.——Public Service Commission.—Where Public Utilities Commission, in order to provide railway company with funds necessary for continued operation of its lines, made order authorizing a schedule of increased fares, such schedule will be permitted to remain in force, where appeals from order are taken until determination upon merits of the appeals.—Public Utilities Commission v. Rhode Island Co., R. I., 104 Atl. 690.

16. **Certiorari**—Discretionary.—Certiorari is not a writ of right, and whether it should be issued is largely discretionary with the court, a discretion not arbitrary, but to be based on reasons of sound public policy.—People v. Burdette, Ill., 120 N. E. 519.

17. **Chattel Mortgages** — Invalidity. — Where goods purchased by corporation for its use are delivered to it, but paper title lodged for an instant in name of its agent, his chattel mortgage to vendor, who has knowledge of all the facts, is void as against creditors of corporation, as agent never had actual or potential interest in goods.—Cross v. Printing Corporation, N. J., 104 Atl. 727.

18. **Commerce**—Police Power.—The Interstate Commerce Law is paramount to the police power of the state.—Monumental Brewing Co. v. Whitlock, S. C., 97 S. E. 56.

19. **Conspiracy**—Complete Offense.—An indictment merely charging a conspiracy to do a thing, but not alleging the thing was done, does not show the completed offense within principle that indictment for conspiracy does not lie when it makes that showing.—Grant v. United States, U. S. C. C. A., 252 Fed. 692.

20.——Overt Act.—A conspiracy is a crime of itself and is complete without the commission of the act for which the conspiracy was formed. —People v. Robertson, Ill., 120 N. E. 539.

21.——Overt Act.—Overt acts, other than those charged in the indictment for conspiracy, tending to show defendant guilty, are admissible as against objection of irrelevancy.—McKnight v. United States, U. S. C. C. A., 252 Fed. 687.

22.——Overt Act.—A mere conspiracy to defraud a county board is insufficient to constitute a crime, unless some overt act charged in the indictment is committed.—State v. Taylor, N. J., 104 Atl. 709.

23. **Contracts**—Excuse for Non-Performance. —Inconvenience or cost making compliance a hardship cannot excuse a party from performance of absolute unqualified undertaking to do a thing that is possible and lawful.—Corona Coal & Coke Co. v. Dickinson, Pa., 104 Atl. 741.

24.——Executory Contract.—If one of the parties to an executory contract avowedly and unequivocally repudiates it, the other party is not obliged to wait until the time fixed for performance, but may sue to establish his rights as soon as the contract is broken.—Dixon v. Anderson, U. S. C. C. A., 252 Fed. 694.

25.——Mutuality.—Contract that, if defendant should purchase certain described lands, he would convey part thereof to plaintiff at a certain price, was a contract of purchase and sale upon a valuable consideration, and not void for lack of mutuality.—Zipperer v. Helmnly, Ga., 97 S. E. 74.

26.——Public Policy.—"Public policy" is that principle of law holding that no person can lawfully do that which has a tendency to injure the public, or which is against the public good, and is sometimes designated as the policy of the law, or public policy in relation to the administration of the law.—Driver v. Smith, N. J., 104 Atl. 717.

27. **Copyrights** — Infringement. — In an infringement suit, where it appeared that defendants had infringed a copyright, an award of attorney's fees in favor of complainant held proper.—Turner & Dahnken v. Crowley, U. S. C. C. A., 252 Fed. 749.

28. **Corporations**—Constructive Notice. — The board of directors of a corporation has constructive notice of such facts as its records, books, and papers disclose.—Hartley v. Ault Woodenware Co., W. Va., 97 S. E. 137.

29.——Foreign Corporation.—Domestic creditors are not entitled to a preference over foreign creditors in case of dissolution or insolvency of a foreign corporation, in view of Corporation Act, §§ 58, 85, 86.—Clark v. Painted Post Lumber Co., N. J., 101 Atl. 728.

30.——Purchase by Director.—A sale of property to a corporation by a director can be sustained only where there was good faith on the part of both the seller and of those who represented the corporation in the transaction.—Drennen v. Southern States Fire Ins. Co., U. S. C. C. A., 252 Fed. 776.

31.——Ratification.—Ratification by a corporation of a contract not previously authorized is more easily inferred where the corporation receives and retains property under it.—In re National Piano Co., U. S. D. C., 252 Fed. 950.

32. **Criminal Law**—Corpus Delicti.—The corpus delicti may be proven by facts and circumstances, positive direct evidence not being indispensable.—Smith v. State, Ala., 79 So. 802.

33.——Dying Declaration.—Admissibility of dying statements attributed to deceased is not affected by fact that they were elicited in reponse to questions put to him by bystander.—Brinson v. State, Ga., 97 S. E. 102.

34.——Former Jeopardy.—A party who has been tried and convicted by a judge not having jurisdiction of the offense cannot plead prior jeopardy, if subsequently indicted for the same offense in a court having jurisdiction thereof.—Barrs v. State, Ga., 97 S. E. 86.

35. **Deeds**—Delivery.—Whether a deed is delivered depends on the grantor's intention.—Struve v. Tatge, Ill., 120 N. E. 549.

36.——Denial of Execution.—If a party who can read executes a deed put before him for execution, or if unable to read does not demand to have it read over and explained, he cannot deny execution, in the absence of fraud, having himself been negligent.—A. B. Hunter & Co. v. Sherron, N. C., 97 S. E. 5.

37.——Fraud and Misrepresentation.—When there are fraud and misrepresentations in procuring execution of a deed, the grantor's want of due care is no defense to the grantee.—Taylor v. Edmunds, N. C., 97 S. E. 42.

38.——Reference to Plat.—If a plat is referred to in a deed as part of the description, it becomes a material and essential part of the conveyance with same effect as if copied into the deed.—McElwee v. Mahlman, Me., 104 Atl. 705.

39. **Divorce**—Comparative Fault.—In fixing the amount of alimony, the relative or comparative fault of the parties is material.—Closz v. Closz, Iowa, 169 N. W. 183.

40.——Contempt.—An attachment for contempt for failure to pay temporary alimony is in the nature of a civil proceeding and is remedial, intended merely to compel obedience to the order.—Beavers v. Beavers, Ga., 97 S. E. 65.

41.——Condonation.—A husband completely condoned a known alleged adultery by expressly forgiving his wife, telling others they were reconciled, and going with her three miles to

their home, although in a few minutes thereafter he renounced the reconciliation because of his brother's objection and took her directly to her parents and cohabitation and sexual intercourse were not resumed.—Bush v. Bush, Ark., 205 S. W. 895.

42. **Domicile**—Acquisition of.—A domicile of choice, once acquired, is not lost until a new domicile has been acquired.—Pannill v. Roanoke Times Co., U. S. D. C., 252 Fed. 910.

43.——Father of Family.—While the domicile of the father ordinarily fixes that of his infant child, where he forces the mother to leave him she may acquire an independent domicile, and her domicile is the domicile of the child.—Ex parte Means, N. C., 97 S. E. 39.

44. **Easements**—Merger.—Right of way for carriageway granted in connection with conveyance of one tract, held not merged in the fee in conveyance to plaintiff of adjacent tract extending into defendants' servient tract.—Perry v. Wiley, Ill., 120 N. E. 455.

45. **Equity**—Laches.—The doctrine of laches has no function when the analogous action or proceeding at law is not barred, and no unusual conditions invoke its application within the period of limitations to secure a just result.—Bunch v. United States, U. S. C. C. A., 252 Fed. 673.

46. **Guaranty**—Co-Guarantor.—If a co-guarantor pays the whole debt, he may compel the other to pay one-half thereof by action at law based on an implied promise.—De Paris v. Wilmington Trust Co., Del., 104 Atl. 691.

47. **Highways**—Adverse User.—Where a highway is used by the public openly, continuously, and adversely for more than seven years, it acquires an easement by prescription or limitation, of which it cannot be dispossessed by owner of fee.—McLain v. Keel, Ark., 205 S. W. 894.

48. **Homicide** — Self-Defense. — Actual and positive danger is not indispensable to justify self-defense, and accused will not be held responsible for mistake as to the extent of the actual danger, where other judicious men would have been alike mistaken.—People v. Scott, Ill., 120 N. E. 553.

49.——Withdrawal from Combat. — Having abused deceased, defendant had no right to fire the fatal shot without having first made the effort required by law to withdraw from the combat.—Gibson v. State, Ark., 205 S. W. 898.

50. **Indictment and Information** — Joinder of Offenses.—It is elementary that two separate offenses cannot be included in one count of indictment.—United States v. Dembowski, U. S. D. C., 252 Fed. 894.

51. **Infant**—Appointment of Agent.—A minor is incapable of appointing an agent or an attorney.—McDonald v. City of Spring Valley, Ill., 120 N. E. 476.

52. **Injunction** — Negotiation of Check. — Where the seller of goods to be delivered on payment of the buyer's check indorses and presents the check, and payment is refused, but the buyer is inadvertently allowed to regain possession of the check with seller's indorsement, seller may restrain the negotiation of the check pending the final determination of the cause on a showing that the buyer is insolvent. —Bridger v. Brett, N. C., 97 S. E. 32.

53.——Notice.—A party to injunction suit served with original notice therein is charged with notice of injunction decree relative to contempt, though not served with the writ as ordered.—Eaton v. De Graff, Iowa, 169 N. W. 187.

54.——Preventing Injury. — Injunctions are granted to prevent, not to redress, injuries.—National Circle, Daughters of Isabella, v. National Order of Daughters of Isabella, U. S. D. C., 252 Fed. 815.

55.——Trade Secrets.—An agreement in a contract of employment on a valuable consideration that the employe will not, while in the employ of the master and for four years thereafter, communicate any information as to the way of doing business, or become interested in any manner in a similar business in the city in which he was employed, held enforceable.—Shirk v. Loftis Bros. & Co., Ga., 97 S. E. 66.

56. **Insurance** — Discrimination. — A mutual life insurance company being forbidden to discriminate between policyholders, any agreement which would result in payment of larger proportionate dividends to one, made by reforming policy to incorporate extrinsic instrument, would be illegal and void.—Graham v. Mutual Life Ins. Co. of New York, N. C., 97 S. E. 6.

57. **Landlord and Tenant**—Counterclaim.—When a tenant is sued for rent and counterclaims for damages upon landlord's breach of contract, he may either bring an independent suit or recoup in the suit for rent, but can only recoup to the amount of the claim for rent.—Selz v. Stafford, Ill., 120 N. E. 462.

58.——Decree pro Confesso.—A defendant was as fully bound by a duly rendered decree pro confesso against him as if he had resisted the suit.—Ferguson v. Babcock Lumber & Land Co., U. S. C. C. A., 252 Fed. 705.

59.——Eviction.—In action for damages to household goods, etc., exposed to rain because of unlawful eviction, the subject-matter of defendant's requested instruction that, if plaintiff's wife took immediate charge of the property, defendants would not be liable for value of any articles subsequently lost or injured, held misleading and properly refused; there being testimony that unsuccessful efforts had been made to obtain another house.—Stanley v. Smith, Ark., 205 S. W. 889.

60. **Libel and Slander**—Privilege.—Where defendant arranged with plaintiff to advertise its products in newspapers, and, discovering that the account had been assigned, refused to honor a check given plaintiff in payment, held, that a communication to a newspaper which carried the advertisement, relating the circumstances, was privileged.—McGhee v. Swift & Co., U. S. C. C. A., 252 Fed. 799.

61.——Privilege.—Criticism of acts of public men is privileged, if fair and reasonable and made in good faith, but not if statements are false.—Democrat Pub. Co. v. Harvey, Ky., 205 S. W. 908.

62. **Marriage**—Solemnization.—Marriage contracted in the state, to be valid, must be

solemnized as prescribed by statute.—In re Meade's Estate, W. Va., 97 S. E. 127.

63. **Master and Servant**—Casual Employment.—The word "casual" as applied to employment in Workmen's Compensation Act, has reference to the contract for service, and not to the particular item of work being done at the time of injury; and, injured employe having been regularly employed for five months at time of accident, his employment was not casual.—Scully v. Industrial Commission of Illinois, Ill., 120 N. E. 492.

64.——Dangerous Methods.—An experienced miller, who, instead of adopting the safe method of unchoking the feed pipe to the roller mill, by closing down the mill, adopts the dangerous method of pushing a stick up the pipe while the mill is running, assumes the risk.—Bright v. Collins, Ky., 205 S. W. 905.

65.——Fellow Servant.—Railroad's locomotive engineer and its brakeman, while engaged in making flying switch with locomotive and car, were "fellow servants" within common-law rule as to assumption of risk of negligence of fellow servant.—Jones v. Norfolk Southern R. Co., N. C., 97 S. E. 48.

66.——Independent Contractor.—An "independent contractor" is one who undertakes to do specific work for other persons without submitting himself to control in details, or who renders service in course of an independent employment, representing the will of his employer only as to results, not means.—Cole v. City of Durham, N. C., 97 S. E. 33.

67.——Safe Place to Work.—The general rule requiring a master to furnish a safe place to work is usually applied to a permanent or quasi permanent place.—Falla v. Pine Mountain Granite Co., Ga., 97 S. E. 114.

68. **Municipal Corporations**—Improvement of Street.—An increase in value resulting from improvement may be set off against damage caused by grading of streets.—City of Savannah v. Williamson, Ga., 97 S. E. 104.

69.——Ordinance.—Ordinances are not "laws" within Const. art 3, § 7, prohibiting local or special legislation.—Taylor v. City of Philadelphia, Pa., 104 Atl. 766.

70.——Police Power.—Police power conferred on cities should be construed and applied so as to meet the dangers incident to and arising out of the subject-matter covered.—Salt Lake City v. Board of Education of Salt Lake City, Utah, 175 Pac. 654.

71. **Negligence**—Ordinary Care.—Where an employe of a transfer company, in pursuance to its agreement with defendant to haul goods from defendant's warehouse, came upon such premises, defendant owed plaintiff the duty to exercise ordinary care not to cause him injury.—Ridenour v. International Harvester Co. of America, Mo., 205 S. W. 881.

72. **Principal and Surety**—Consideration.—The consideration to sureties on notes given for corporate stock issued therefor illegally was, first, what their principal, the maker of the note, received, and, second, the detriment to the payee in having relied on the undertaking of the sureties, who then failed to respond.—Sherman v. Smith, Iowa, 169 N. W. 216.

73. **Railroads** — Concurrent Negligence. — Where the negligence of a railroad company in insecurely braking and locking cars on a downgrade is concurrent with the negligence of children in releasing such cars, a person whose property is damaged by the cars running away may recover from the railroad company.—Southern Mirror Co. v. Norfolk & W. Ry. Co., N. C., 97 S. E. 47.

74. **Sales**—Condition Precedent.—A provision in a contract for the manufacture and delivery of staves that the staves shall be inspected according to the rules of a certain association does not require an arbitration provided for in such rules as a condition precedent to an action for breach of the contract.—Crescent Stave Co. v. Brown, Ky., 205 S. W. 937.

75.——Executory Contract.—Where executory contract for sale of goods provides for their delivery on order during a certain period, time is of essence of contract, and failure to order delivery within that period terminates buyer's right to order shipment of goods.—Lee Bros. v. Bewley-Darst Coal Co., Ga., 97 S. E. 99.

76.——Measure of Damages.—Measure of damages to a buyer from a seller's failure to deliver goods according to contract is the difference between the contract price and the market value of goods at the time and place of delivery.—Thomas Raby, Inc., v. Ward-Meehan Co., Pa., 104 Atl. 750.

77. **Specific Performance**—Substantial Performance.—Substantial performance of a contract by complainant is in general sufficient to authorize a decree for specific performance.—City of La Follette v. La Follette Water, Light & Telephone Co., U. S. C. C. A., 252 Fed. 762.

78. **Vendor and Purchaser.**—Notice of Prior Deed.—If subsequent purchaser knows of deed executed by vendor and his wife to prior purchaser, or has such notice as would cause a prudent man of ordinary diligence to ascertain whether prior deed had been executed, he is bound by first deed, though his own was recorded first.—Struve v. Tatge, Ill., 120 N. E. 549.

79. **Wills**—Costs and Attorney Fees.—It was duty of executor to use reasonable efforts to uphold the will but the trial court should make such orders as to payment of costs and reasonable attorney's fees from estate as shall be equitable to all interests in view of facts.—Rice v. Winchell, Ill., 120 N. E. 572.

80.——Descendants.—The word "descendants," in Ky. St. § 2064, as to share of devisee who dies before testator going to his descendants, if any, etc., means those who have issued from an individual and include his children, grandchildren, and their children to the remotest degree, but does not include collateral relations.—Holloway v. Brown, Ky., 205 S. W. 925.

81.——Disinheritance.—While a residuary clause carries all not well given, an heir cannot be disinherited, except by express words or by necessary implication.—In re Plumly's Estate, Pa., 104 Atl. 670.

82.——Intent.—Intent necessary to sustain an alleged contract to devise, and which must be proved, is to be measured as of the time of the alleged contract.—Alexander v. Lewes, Wash., 175 Pac. 572.

83.——Testamentary Capacity.—There is a presumption of testamentary capacity.—Keller v. Lawson, Pa., 104 Atl. 678.

84.——Undue Influence.—Undue influence invalidating a will must be something destroying the testator's free agency, and in effect substituting another's will.—In re Cook's Estate, Okla., 175 Pac. 507.

85. **Witnesses**—Competency.—Where a witness is called generally by a party thereafter objecting to his competency, he is thereby rendered competent for either side for all purposes.—In re Lentz's Estate, Pa., 104 Atl. 763.

86.——Conviction of Crime.—Previous convictions do not make a witness incompetent in a federal court.—Safford v. United States, U. S. C. C. A., 252 Fed. 471.

87.——Impeachment.—In prosecution for selling intoxicating liquor, state's witness was properly allowed to be impeached by showing that she was a woman of bad character, but not by evidence that she hung about saloons.—Mobley v. State, Ark., 205 S. W. 827.

88.——Interpreter.—An interpreter is a witness and should be sworn.—Commonwealth v. Corsino, Pa., 104 Atl. 739.

89.——Privilege.—Plaintiff servant, by testifying that one of results of accident was hernia, did not waive privilege given by Rev. Codes Idaho, § 5958, where he did not testify that a physician had attended him, and it was not error to exclude testimony of physician to effect that he had treated plaintiff for hernia before accident.—Federal Mining & Smelting Co. v. Dalo, U. S. C. C. A., 252 Fed. 356.